

**State of Maine
Board of Licensure in Medicine
137 SHS, 161 Capitol Street
Augusta, Maine 04333-0137
Minutes of June 11, 2013**

Board Members Present

Gary R. Hatfield, M.D., Chairman
Maroulla Gleaton, M.D., Board Secretary
David R. Andrews, M.D.
Louisa Barnhart, M.D.
Cheryl Clukey
David H. Dumont, M.D.
Dana Dyer
David D. Jones, M.D.
David Nyberg, Ph.D.

Board Staff Present

Randal C. Manning, Executive Director
Dan Sprague, Assistant Executive Director
Tim Terranova, Consumer Assistant
Katherine Levesque, Investigator

Attorney General's Office Staff

Dennis Smith, Assistant Attorney General
James Gioia, Detective

The Board meets in public session with the exception of the times listed below, which are held in executive session. Executive sessions are held to consider matters which, under statute, are confidential (1 M.R.S. §405) and 10 M.R.S.A. §8003-B, and 22 M.R.S. § 1711-C). The Board moved, seconded, and voted the following executive session times. During the public session of the meeting, actions are taken on all matters discussed during executive session. Discussions are projected on a screen by PowerPoint projection.

EXECUTIVE SESSION

10:23 a.m. – 10:40 a.m.	Informal Conference
10:52 a.m. – 12:24 p.m.	Informal Conference
5:17 p.m. – 5:57 p.m.	Complaints

I. Call to Order

Dr. Hatfield called the meeting to order at 9:00 a.m.

A. Amendments to Agenda

1. CR12-236 William Fannin, M.D. Consent Agreement Approval
2. CR12-174 Thomas Hayward, M.D. Consent Agreement Approval
3. CR12-175 Nelson Meaker, P.A.-C. Consent Agreement Approval

B. Scheduled Agenda Items

9:00 a.m. Adjudicatory Hearing – CR13-10 Marshall J. Hubsher, M.D.

11:00 a.m. Informal Conferences

- a. CR12-51
- b. CR12-101

1:00 p.m. Adjudicatory Hearing CR11-511/12-24 Charles D. M. Clemetson, M.D.

3:00 p.m. Adjudicatory Hearing CR13-86 Robert K. Desai, M.D.

Executive Session

II. Complaints

1. Letters of Guidance (None)
2. CR12-44 – Deborah A. Learson, M.D.

Dr. Barnhart moved to dismiss the complaint with a letter of guidance. Dr. Dumont seconded the motion, which passed 8-0-0-1 with Dr. Hatfield recused.

MOTION: Two patients complained that their long term chronic pain narcotic prescriptions were discontinued abruptly and unfairly. Review of the records reveals management of the patients' pain medications before seeing and examining the patients. The patients were asking for early refills and violated the pain contract. The patients made multiple trips to the office to obtain appropriate prescriptions. This occurred in the context of severe personnel shortage. The concern is not that these patients were discontinued but the manner in which this occurred. These cases are dismissed but the following letter of guidance is provided: Each patient on long term chronic opioids deserves a thorough case review, examination, and discussion before changes in management are contemplated. When there is a change in providers, the need for evaluation may result in a temporary period of less than optimal management.

3. CR12-59 – Deborah A. Learson, M.D.

Dr. Barnhart moved to dismiss the complaint with a letter of guidance. Dr. Jones seconded the motion, which passed 8-0-0-1 with Dr. Hatfield recused.

MOTION: Two patients complained that their long term chronic pain narcotic prescriptions were discontinued abruptly and unfairly. Review of the records reveals management of the patients' pain medications before seeing and examining the patients. The patients were asking for early refills and violated the pain contract. The patients made multiple trips to the office to obtain appropriate prescriptions. This occurred in the context of severe personnel shortage. The concern is not that these patients were discontinued but the manner in which this occurred. These cases are dismissed but the following letter of guidance is provided: Each patient on long term chronic opioids deserves a thorough case review, examination, and discussion before changes in management are contemplated. When there is a change in providers, the need for evaluation may result in a temporary period of less than optimal management.

4. CR12-235

Dr. Barnhart moved to dismiss the complaint. Dr. Jones seconded the motion, which passed 8-0-0-1 with Dr. Hatfield recused.

MOTION: A patient states the physician prescribed medications for her that were actually meant for her daughter. Review of the records reveals that the daughter and mother are on similar medications, but only the mother's prescriptions are covered by insurance. It is impossible for the Board to know if the physician knowingly filled medications as the mother claims, or if she was misled by the family into doing so.

5. CR13-65

Dr. Jones moved to table the complaint. Dr. Dumont seconded the motion, which passed 8-0-0-1 with Dr. Hatfield recused.

6. CR12-229

Dr. Barnhart moved to dismiss the complaint. Dr. Nyberg seconded the motion, which passed unanimously.

MOTION: The deceased patient's mother complains that the doctor did not hospitalize her daughter and failed to intervene effectively in the daughter's poor decision making. The mother also complains that the medication provided to her daughter contributed to the sad outcome. The physician's care was thorough and persistent through difficult circumstances. The physician wanted to hospitalize the daughter but it was never the physician's legal right to do so. He left word with coverage physicians to try to hospitalize her if at all possible, while he remained available for drop in visits and 24/7 call. The medication provided was standard in the specialty, there was no escalation of dose, and coordination with the primary care provider occurred multiple times. The situation was very difficult for family and physician alike, given the nature of the illness and the legal constraints on involuntary hospitalization.

7. CR13-13

Dr. Andrews moved to investigate further. Dr. Jones seconded the motion, which passed unanimously.

8. CR13-36

Dr. Dumont moved to dismiss the complaint. Dr. Gleaton seconded the motion, which passed unanimously.

MOTION: This complaint alleges that a doctor misdiagnosed a patient's headaches. Review of the physician's response and his records shows appropriate medical evaluation, decision making, and treatment. When the patient did not improve, additional testing was ordered and specialty referral was made. The initial specialist agreed with the diagnosis. The medical care provided appears to have been appropriate.

9. CR13-37

Dr. Dumont moved to dismiss the complaint. Mr. Dyer seconded the motion, which passed unanimously.

MOTION: This patient alleges that an ENT physician misdiagnosed him and recommended unnecessary surgery. Review of the record and the physician response shows a thorough exam and a reasonable treatment course. A subsequent ENT evaluation did not dispute the diagnosis but did suggest alternative treatments. This difference in recommendations is not unusual and does not imply that one or the other is wrong. The medical care provided was appropriate.

10. CR13-9

Dr. Jones moved to dismiss the complaint. Dr. Dumont seconded the motion, which passed unanimously.

MOTION: The mother of the patient complains that this physician assistant was unprofessional and violated the rights of her 16 year old daughter. The mother states that she was not with her daughter when the medical assistant did the initial vital signs exam, and obtained a urine sample. A pregnancy test was done subsequently without the mother's or patient's knowledge or permission. The mother also felt that the physician assistant was demeaning with a statement about tears after the patient's first Pap smear, and in a discussion with her daughter concerning her weight. She also states that she was not informed of lab results in a timely manner. The physician assistant did a thorough evaluation addressing the patient's complaints and states she is always very sympathetic with young women who are having their first pelvic exams. She apologizes if she did not discuss ordering the pregnancy test, and states that she usually discusses this with the patient. She generally orders a pregnancy test in young women who have irregular periods, especially if associated with abdominal complaints. The physician assistant also discussed obesity and exercise with the patient, further angering the mother. Again, the physician assistant apologizes, noting she may have been more rushed than normal, as the 15 minute appointment had already lasted 1 hour. This physician assistant also called or mailed lab results in a timely manner, as documented in the record. Review of the record does not support this complaint.

11. CR13-31

Dr. Jones moved to investigate further. Mr. Dyer seconded the motion, which passed unanimously.

12. CR13-38

Ms. Clukey moved to dismiss the complaint. Dr. Jones seconded the motion, which passed unanimously.

MOTION: The patient complains he was treated inappropriately by the physician over a period of two years. The physician's response to the contrary is detailed and convincing. The patient did not provide releases for all relevant medical records and requested to withdraw his complaint. After investigation the Board agrees with the patient that his complaint, though it cannot be withdrawn, should be dismissed.

13. CR13-6

Mr. Dyer moved to dismiss the complaint. Dr. Gleaton seconded the motion, which passed unanimously.

MOTION: The patient complains the consultant physician did not communicate with her PCP about her upcoming surgery. She complains that, when contacted by her PCP, the physician failed to mention that she had been referred to a surgeon. This failure resulted in her pain medication being stopped and her being dismissed from her PCP's practice. The physician responds by explaining his three visits with the patient. When the PCP called he states he informed him that the patient had been referred to a surgeon at her request but that no surgery had been scheduled. The patient did not provide releases for her records; therefore, it is not possible for the Board to evaluate this complaint further.

14. CR13-8

Mr. Dyer moved to dismiss the complaint. Dr. Andrews seconded the motion, which passed unanimously.

MOTION: The patient alleges the physician unjustly discharged her from the practice for being dishonest. The patient's medical records appeared to the physician to indicate she was dishonest. In an attempt to discuss her case the office staff called the patient and left several telephone messages. She did not return any of the calls. She did not provide an authorization to release her records for Board review. In continued follow up the doctor

has agreed to allow her care to continue to be provided by the practice. The patient has received appropriate consideration, given the circumstances.

15. CR13-12

Dr. Andrews moved to dismiss the complaint. Dr. Jones seconded the motion, which passed unanimously.

MOTION: The patient alleges that his allergist was dishonest and incompetent in the care of the patient's allergic rhinitis and subsequent course of immunotherapy, which was unsuccessful. The physician responds that the patient's noncompliance in cessation of over the counter nasal medication was a major factor in the treatment failure. Record review shows appropriate care of the patient with a documented discussion of alternative approaches to the problem and a consent document signed by the patient which included a statement of no guarantees of success. There is no support in the record for the allegations made by the complainant.

16. CR13-18

Dr. Barnhart moved to dismiss the complaint. Dr. Gleaton seconded the motion, which passed unanimously.

MOTION: The complainant feels that improper protocol was used when a flu shot was discussed. The records show proper protocol was used.

17. CR13-19

Mr. Dyer moved to dismiss the complaint. Dr. Dumont seconded the motion, which passed unanimously.

MOTION: The patient complains he was not treated appropriately during a first visit with the physician. The record documents the physician's experience of a very reluctant, uncooperative, and volatile patient who made the examination impossible to continue. The physician became apprehensive for her safety and was justified in ending the visit.

18. CR13-23

Dr. Jones moved to dismiss the complaint. Dr. Gleaton seconded the motion, which passed unanimously.

MOTION: The patient states that she saw two gynecologists in the same office over a three year period and complains that their care was inadequate. She felt that the cause of her chronic pelvic pain was misdiagnosed and poorly managed. The physician in this

complaint was her primary gynecologist and saw her over this three year period. Review of the record demonstrates that the patient's symptoms were not chronic, but intermittent, and initial evaluation and surgical intervention in 2008 was appropriate. Subsequently, the patient developed new symptoms and was scheduled for an exploratory laparoscopic exam by another gynecologist in this physician's office. The procedure was cancelled by her primary gynecologist, who wanted a more thorough evaluation of the patient before an exploratory surgery, and he made a referral to a gastroenterologist for a second opinion. The patient cancelled this referral. Subsequent to this, the patient's symptoms slowly resolved and the patient remained pain free for 18 months. The pain then returned on the opposite side of her pelvis and she was unable to get an appointment with her gynecologist, so her primary care provider ordered a test and referred her to a new gynecologist. The physician named in this complaint did not have the chance to discuss her new symptoms with her or to review the new test results with her. The physician has expressed regret that their relationship ended without a fitting conclusion.

19. CR13-24

Dr. Jones moved to dismiss the complaint. Mr. Dyer seconded the motion, which passed unanimously.

MOTION: The patient states that she saw two gynecologists in the same office over three year period and complains that their care was inadequate. She felt that the cause of her chronic pain was misdiagnosed and poorly managed. She complains about multiple visits with the physician in this complaint. Review of the record does not support this complaint. The physician only saw the patient twice, two weeks apart, and the care was appropriate.

20. CR13-49

Dr. Andrews moved to order an informal conference. Dr. Jones seconded the motion, which passed unanimously.

21. CR13-55

Dr. Dumont moved to dismiss the complaint. Dr. Jones seconded the motion, which passed unanimously.

MOTION: This complaint comes from a patient in an institution who feels that the facility's physician unjustly discontinued his pain medication. This action, he claims, has resulted in unnecessary physical and mental suffering. He also claims the physician did not adequately review his old records and that doing so would have helped justify the ongoing use of his pain medications. Review of the chart shows an appropriate plan to discontinue the medication and to replace it with other non-narcotic medicines. The

doctor describes appropriate reasons for the medication changes and demonstrates a reasonable understanding of the patient and his issues. In addition, changes in care were discussed by the treatment team in conjunction with the patient's mental health providers. Many of the patient's mental health issues appear to have been present prior to this medication change. The patient unfortunately will probably always have limitations caused by his pain but his ongoing care appears to be appropriate.

22. CR13-56

Ms. Clukey moved to dismiss the complaint. Dr. Jones seconded the motion, which passed 7-0-0-2 with Drs. Andrews and Dumont recused.

MOTION: The complainant feels that she was treated inappropriately, and also was accused of being a drug abuser. The physician explains the treatment given, and denies making the accusation. A review of the records shows appropriate medical care. The physician wrote a letter to the complainant apologizing for any misunderstanding.

23. CR13-58

Dr. Gleaton moved to dismiss the complaint. Dr. Andrews seconded the motion, which passed unanimously.

MOTION: A patient complains about the competency of an ophthalmologist with regard to the refraction part of her eye examination. Review of the records reveals medical and refractive competency. Prescribing glasses can be complex, as there is an objective and subjective component as well as a physical comfort aspect to be considered. The physician has more than reasonably tried to satisfy this patient by rechecking her prescription personally as well as reimbursing her for her cost of the glasses that did not work for her. The physician's response appropriately resolves this complaint.

24. CR13-71

Dr. Gleaton moved to dismiss the complaint. Dr. Barnhart seconded the motion, which passed unanimously.

MOTION: The patient alleges that the physician inappropriately charged him for writing out a new eyeglass prescription, especially since he was not notified about the charge and the physician did not think the change in eyeglass prescription was necessary. The patient's suspicion about the charge was heightened by the fact that it was not covered by Medicare. The physician responded by indicating that Medicare has never provided reimbursement for refractions as this is a "non-covered service." According to the physician, he does not normally advise patients that this is a service for which they will have to pay, but has posted a policy to this effect at the check-in and check-out

areas of the practice. In addition, according to the physician, the fee charged is not for writing a new prescription, but for the procedure that generates the numbers which produce the "best correctional visual acuity." As a result of this complaint, the physician has created and prominently posted a new "Refraction Billing Policy" to avoid future patient confusion regarding this issue.

25. CR13-61

Dr. Dumont moved to investigate further. Dr. Jones seconded the motion, which passed unanimously.

26. CR13-64

Dr. Nyberg moved to table the complaint. Dr. Gleaton seconded the motion, which passed unanimously.

27. Intentionally Left Blank

28. Intentionally Left Blank

III. Assessment & Direction

29. AD12-214

Dr. Jones moved to issue a complaint (CR13-115). Dr. Gleaton seconded the motion, which passed unanimously.

30. AD13- 26

Dr. Jones moved to table the matter. Dr. Dumont seconded the motion, which passed unanimously.

31. AD13-90

Dr. Gleaton moved to issue a complaint (CR13-116). Dr. Jones seconded the motion, which passed 8-0-0-1 with Dr. Dumont recused.

32. AD13-91

Dr. Dumont moved to issue a complaint (CR13-117). Dr. Jones seconded the motion, which passed 8-0-0-1 with Dr. Hatfield recused.

33. AD13-92

Dr. Gleaton moved to file the matter. Dr. Jones seconded the motion, which passed unanimously.

- 34. Intentionally Left Blank
- 35. Intentionally Left Blank
- 36. Complaint Status Report (FYI)
- 37. Consumer Assistant Feedback (FYI)
- 38. Physician Feedback (None)

IV. Informal Conference 11:00 a.m.

A. CR12-51

Ms. Clukey moved to table the complaint. Mr. Dyer seconded the motion, which passed unanimously.

B. CR12-101

Dr. Nyberg moved to accept the licensee's withdrawal of licensure if he signs a document acknowledging that such an action is reportable. Dr. Jones seconded the motion, which passed unanimously.

Public Session

V. Minutes of June 11, 2013

Dr. Jones moved to approve the minutes of May 14, 2013. Dr. Gleaton seconded the motion, which passed unanimously.

VI. Board Orders & Consent Agreement Monitoring and Approval

- A. Board Orders (None)
- B. Consent Agreement Monitoring and Approval

1. CR12-236 William Fannin, M.D. [See Attachment A]

Dr. Gleaton moved to approve the proposed Consent Agreement. Dr. Barnhart seconded the motion, which passed unanimously.

Dr. Dumont moved to approve the MPHP monitoring contract. Dr. Nyberg seconded the motion, which passed unanimously.

Dr. Andrews moved to accept Dr. Jeanblanc as the mental health and substance abuse treatment provider. Dr. Barnhart seconded the motion, which passed unanimously.

Mr. Dyer moved to allow Dr. Barnhart authority to approve a workplace monitor. Dr. Jones seconded the motion, which passed unanimously.

2. CR 12-174 Thomas Hayward, M.D. [See Attachment B]

Dr. Jones moved to approve the proposed Consent Agreement. Dr. Andrews seconded the motion, which passed 8-0-0-1 with Dr. Gleaton recused.

3. CR12-175 Nelson R. Meaker, P.A.-C. [See Attachment C]

Dr. Jones moved to approve the proposed Consent Agreement. Dr. Andrews seconded the motion, which passed unanimously.

VII. Adjudicatory Hearing(s) (9:00 a.m.)

A. CR13-10 Marshall J. Hubsher, M.D.

Prior to the Adjudicatory Hearing Mr. Dyer moved that Dr. Hubsher not be allowed to withdraw his application. Dr. Jones seconded the motion which passed unanimously.

Following an Adjudicatory Hearing, Dr. Gleaton moved to uphold the preliminary denial of licensure. Dr. Jones seconded the motion, which passed unanimously.

B. CR11-511/12-24 Charles D. Clemetson, M.D.

Following an Adjudicatory Hearing, Dr. Andrews moved to place the licensee on probation for five years. Dr. Jones seconded the motion which passed 8-0-0-1 with Dr. Barnhart recused from the proceedings.

C. CR13-86 Robert K. Desai, M.D. [See Attachment D]

Dr. Nyberg moved to approve the Consent Agreement signed by Dr. Desai. Barnhart seconded the motion, which passed 8-0-0-1 with Dr. Jones recused.

VIII. Remarks of Chairman

A. Board members and staff thanked and congratulated Dr. Hatfield for his twelve years of service.

IX. Executive Director's Monthly Report

The Board accepted the report of the Executive Director.

A. Complaint Status Report (FYI)

X. Medical Director's Report (None)

XI. Remarks of Assistant Attorney General (None)

XII Secretary's Report

A. List A

1. M.D. List A Licenses for Ratification

Dr. Jones moved to ratify Dr. Gleaton's approval of the Physicians M.D. List A. Dr. Andrews seconded the motion, which passed unanimously.

The following license applications have been approved by Board Secretary Maroulla Gleaton, M.D., without reservation.

NAME	SPECIALTY	LOCATION
Aronowitz, Jessica G.	Orthopedic Surgery	Bangor
Baskara, Arunkumar	General Surgery	Millinocket
Berman, Ari S.	Internal Medicine	Portland
Bobzien, Elizabeth R.	Family Medicine	Portland
Curtis, Margaret T.	Pediatrics	Not Listed
Dean, Anthony J.	Emergency Medicine	Bar Harbor
Ennacheril, Trustin R.	Internal Medicine	Not Listed
Ftesi, Abdul N	Internal Medicine	Presque Isle
Harb, Antoine J.	Internal Medicine	Bangor
Khalil, Michael	Diagnostic Radiology Teleradiology	
Klibansky, David A.	Internal Medicine	Portland
Lichtenstein, Erin E.	Ophthalmology	Portland
Lortscher, David N.	Dermatology	Telemedicine
Martel, John W.	Emergency Medicine	Portland
Moitoza, James R.	Orthopedic Surgery	Waterville
Murphy, Mary C.	Emergency Medicine	Lewiston
Paranya, Gretchen F.	Ob/Gyn	Biddeford
Peterson, John M.	Pediatrics	Machias
Rahmatullah, Syed I.	Internal Medicine	Bangor
Rudis, Steven P.	Emergency Medicine	Not Listed
Solomon, Randall L.	Psychiatry	Caribou
Stoicov, Calin	Internal Medicine	Brunswick
Townsend, Mark E.	Ob/Gyn	Caribou

Wyatt, Colby A.

Pediatrics

Portland

2. P.A. List A Licenses for Ratification

Dr. Dumont moved to ratify Dr. Gleaton's approval of the Physician Assistants on PA List A for licensure. Dr. Jones seconded the motion, which passed unanimously.

The following Physician Assistant license applications have been approved by Board Secretary Maroulla Gleaton, M.D., without reservation.

<u>NAME</u>	<u>LICENSE</u>	<u>PSP</u>	<u>LOCATION</u>
Bronna Eckelman, P.A.-C	Active	Julie Grosvenor, M.D.	Sanford
Peter Guilfoyle, P.A.-C	Inactive	NONE	NONE
Joann Heron, P.A.-C	Inactive	NONE	NONE
Aria Kenney, P.A.-C	Inactive	NONE	NONE
Anthony Martin, P.A.-C	Inactive	NONE	NONE
Amy Patrick, P.A.-C	Active	Timothy Webb, M.D.	Waterville
Anne Rosenberg, P.A.-C	Active	Konrad Barth, M.D.	Scarborough
Jon Stubblefield, P.A.-C	Inactive	NONE	NONE

B. List B Applications for Individual Consideration

1. Alexandra M. Idenburg, M.D.

The Licensure Committee moved to grant a waiver. The motion passed unanimously.

2. Johnathan R. Oppenheimer, M.D.

The Licensure Committee moved to approve the application. The motion passed unanimously.

3. John A. Hallberg, M.D.

The Licensure Committee moved to grant a temporary license. The motion passed 8-0-0-1 with Dr. Jones recused.

C. List C Applications for Reinstatement

1. List C Applications for Reinstatement (None)

2. List C Applications for Reinstatement for Individual Consideration (None)

D. List D Withdrawals

1. List D (1) Withdraw License Application (None)
2. List D (2) Withdraw License from Registration

Dr. Jones moved to approve the licensees on List D (2) to withdraw from registration. Dr. Dumont seconded the motion, which passed unanimously.

The following physicians have applied to withdraw their licenses from registration.

<u>NAME</u>	<u>LICENSE NO.</u>
Bub, Lawrence	MD17707
DeShaney, Katrina	PA1146
Henderson, Bradley	MD19028
Ouellette, Elaine	PA134
Rouillard, Renald	PA332
Spector, Jonathan	MD19461
Zaharia, Antoanela	MD17224

3. List D (3) Withdraw License from Registration - Individual Consideration (None)

E. List E Licenses to lapse by operation of law

The following physician licenses lapsed by operation of law effective May 6, 2013.

<u>NAME</u>	<u>LICENSE NO.</u>
Akad, Ali	MD5270
Anderson, Melissa	PA1242
Bayat, Neysan	MD17427
Browne, Tina	PA855
Carter III, William	MD19156
Cesar, Carlos	MD19141
Chang, Poh-Yong	MD12334
Cushman, Cynthia	MD19032
Daiute, Paul	PA15
David, Patricia	MD18098
Dean, Patrick	MD17141
Duerkes, Michael	PA1304

Fardelmann, Dale	MD5676
Foresman, Lauren	PA1293
Gauthier, Michael	PA1120
Goodlet Jr., James	MD18033
Greene, Thomas	PA1211
Grimes, Janet	MD18936
Hamilton, Daniel	PA123
Hays, Toni	PA1335
Heineman, Frederick	MD13757
Kalajian, Kristin	PA743
Kessler, Robert	MD19000
King, Sarah	MD18199
Lawson, Amie	PA1141
Lehman, Evan	MD15517
McBride, Joseph	MD18533
Mong, David	MD17446
Nagendra, Hassan	MD8815
Osis, Alise	PA1178
Perry, Sondra	PA718
Ray, Sunita	MD17067
Sawyer, Patrick	PA1326
Schruff, Louis	MD16742
Schwartz, Edward	MD11624
Shalabi, Ahmed	MD18726
Simonds, Jacquelyn	PA366
Spector, Jonathan	MD19461
Stecher, Martin	MD11434
Stelton, Stephanie	PA1340
Taylor, Eileen	PA1297
Teng, Heather	PA1365
Ubaissi, Hazem	MD18559
Vaughn, Traci	MD19431
Voss, Matthew	MD18290
Wagner, Megan	PA1085
Williams, Stacy	PA1171
Wing, Bruce	PA1158
Winterer, Jorg	MD19197
Woodlee, Jimmie	PA8

F. List F Licensees requesting to convert to active status (None)

G. List G Renewal applications for review

a. Jeanette Smith, M.D.

The Licensure Committee moved to approve the renewal. The motion passed unanimously.

b. Rowlinda Stone, M.D.

The Licensure Committee tabled the matter.

H. List H. Physician Assistant Schedule II Authority Requests for Ratification

1. Applications to Renew Schedule II Authority (None)

2. Applications for New Schedule II Authority

Dr. Jones moved to ratify Dr. Gleaton's approval of the following requests for Schedule II Authority. Dr. Nyberg seconded the motion, which passed unanimously.

The following new requests for Schedule II prescribing authority have been approved by Board Secretary Maroulla Gleaton, M.D.

<u>NAME</u>	<u>PSP</u>	<u>LOCATION</u>
Nicole Beaulieu, P.A.-C	Lisa A. Floyd, M.D.	Bangor
Bronna Eckelman, P.A.-C	Julie Grosvenor, M.D.	Sanford
Angela LeClerc, P.A.-C	Konrad Barth, M.D.	Scarborough
Anne Bourgoin, P.A.-C	Konrad Barth, M.D.	Scarborough
Melissa Tsomides, P.A.-C	Karin Cole, M.D.	Portland

XIII. Standing Committee Reports

A. Legislative & Regulatory Committee

Mr. Manning reviewed current legislation pertaining to the Board.

B. Licensure Committee

The Committee instructed staff to remind health care facilities of their mandated reporting obligations.

C. Physician Assistant Advisory Committee

Discussion regarding the Committee was tabled until the next meeting.

XIV. Board Correspondence (None)


XV. FYI

XVI. FSMB Material (None)

XVII. Other Business (None)

XVIII. Adjournment 6:15 p.m.

Respectfully submitted,



Timothy Terranova
Consumer Assistant

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

<u>In re:</u>)	CONSENT AGREEMENT FOR
William R. Fannin, Jr., M.D.)	CONDITIONAL LICENSURE
Complaint No. CR12-236)	
)	

INTRODUCTION

This document is a Consent Agreement For Conditional Licensure, which imposes conditions upon the license to practice medicine in the State of Maine issued to William R.

Fannin, Jr., M.D. The parties to this Consent Agreement For Conditional Licensure are: William R. Fannin, Jr., M.D. ("Dr. Fannin"); the State of Maine Board of Licensure in Medicine ("the Board"), and the Office of the Attorney General ("the Attorney General"). This Consent Agreement is entered into pursuant to 32 M.R.S. § 1077 and 10 M.R.S. § 8003(5).

FACTS

1. Pursuant to Title 32 Chapter 48 the Legislature endowed the Board with the power and duty to regulate the practice of physicians and physician assistants licensed by the Board, including setting standards of practice and investigating complaints. Pursuant to 10 M.R.S. § 8008 the Legislature provided that the sole purpose of the Board is to "protect the public health and welfare" and that "other goals or objectives may not supersede this purpose."

2. The Board first issued Dr. Fannin a license to practice medicine in Maine on March 30, 1994. Dr. Fannin specializes in Psychiatry.

3. On or about November 27, 2012, the Board received information from St. Mary's Regional Medical Center (SMRMC) regarding Dr. Fannin pursuant to Title 24 M.R.S. § 2506. According to that information, SMRMC had suspended Dr. Fannin's employment as a result of

incidents of unprofessional behavior that occurred on November 5, 2012, and November 7, 2012. In addition, according to that information, Dr. Fannin's conduct on November 7, 2012 put himself, the public and patients at risk. As a result, Dr. Fannin agreed to enter into a "Return to Work" agreement with SMRMC in which he agreed to participate in the Maine Medical Professionals Health Program (MPHP) and not return to work until deemed safe to provide patient care.

4. On December 4, 2012, the Board received a facsimile of a psychiatric evaluation of Dr. Fannin, which indicated major impairment in several areas including work, judgment, cognitive processing and mood as a result of several diagnosed medical conditions.

5. On December 6, 2012, the Board received a facsimile letter from Dr. Fannin in which he included a copy of his contract with the MPHP. Dr. Fannin also indicated that the Board should have received his recent psychiatric evaluation. According to Dr. Fannin, his plan was "to do what I have to do to get back to work ASAP" and that "St. Mary's Behavioral Health Program has told me I can return to work when the MPHP feels that it is OK."

6. On December 7, 2012, the Board received information from the MPHP confirming that Dr. Fannin had signed an Evaluation and Treatment Agreement, and that it would be meeting with Dr. Fannin in order to put him under a Monitoring Contract that would define the frequency of urine testing and therapy, require him to acquire a work monitor, and require him to complete a monthly assessment.

7. On December 11, 2012, the Board reviewed the foregoing information and voted to initiate a complaint against Dr. Fannin's Maine medical license pursuant to 32 M.R.S. § 3282-A. The Board docketed the complaint as CR12-236 and sent it to Dr. Fannin for a response.

8. On January 18, 2013, the Board received a response from Dr. Fannin to Complaint CR12-236. In his response, Dr. Fannin included a copy of a psychiatric evaluation performed by Dr. B and stated, "I agree with the evaluation and he is treating me. I want to do whatever I need to do to get this situation under control and to be able to return to practice." According to the evaluation, certain aspects of Dr. Fannin's cognition were impaired as a result of his medical condition, which limited his ability to make judgments and decisions and to perform effectively under stress.

9. On February 12, 2013, the Board conducted an initial review of Complaint CR12-236. Following its initial review, the Board voted to further investigate the matter to determine whether Dr. Fannin had initiated the contact with the MPHP or whether he was referred to that program by SMRMC.

10. On or about February 20, 2013, the Board received a report from Attorney General Detective James Gioia regarding an interview with Dr. Fannin on February 19, 2013. According to that report, Dr. Fannin admitted that he did not contact the MPHP himself, but agreed that it was a good idea. In addition, Dr. Fannin stated that he disagreed with Dr. B's diagnosis and would be seeing another physician for a second opinion and further neurological testing.

11. On March 7, 2013, the Board received an email from Dr. Fannin in which he requested that the Board drop the complaint filed against him by SMRMC because the issues and problematic behaviors described in its complaint were the result of an emerging medical problem and issues over which he "did not have control." Dr. Fannin went on to describe a number of

major personal life stressors that he was experiencing at the time of the incidents at SMRMC, and expressed his intention to continue to work with the MPHP.

12. On March 12, 2013, the Board reviewed all of the foregoing information, and voted to offer Dr. Fannin a Consent Agreement in order to resolve Complaint CR12-236 without further proceedings.

13. On May 14, 2013, the Board reviewed additional information regarding Dr. Fannin, which included: a formal neuropsychological evaluation that indicated that Dr. Fannin did not have cognitive deficits and that he was "functioning in the superior range of overall intellectual ability;" a letter from the MPHP indicating that Dr. Fannin was enrolled in and compliant with that program; and a letter from Dr. Fannin's psychiatrist who also evaluated Dr. Fannin and found no cognitive deficits. Following its review of this additional information, the Board voted to offer Dr. Fannin this Consent Agreement in order to resolve Complaint No. CR12-236 without further proceedings.

14. This Consent Agreement has been negotiated by legal counsel for Dr. Fannin and legal counsel for the Board. Absent acceptance of this Consent Agreement by Dr. Fannin by signing it and dating it in front of a notary and returning it to Maureen Lathrop, Investigative Secretary, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before June 21, 2013, the Board may take any action permitted by law regarding complaint CR12-236.

15. By signing this Consent Agreement, Dr. Fannin waives, in his personal capacity and through legal counsel, any and all objections to, and hereby consents to the presentation of this proposed Consent Agreement to the Board for possible ratification. Dr. Fannin waives, in

his personal capacity and through legal counsel, forever any arguments of bias or otherwise against any of the Board members in the event that the Board fails to ratify this proposed Consent Agreement.

16. In light of Dr. Fannin's prior conduct and the documentation of his efforts at rehabilitation and abstinence, and in light of the Board's duty to protect the public, the parties agree to enter in to this Consent Agreement For Conditional Licensure pursuant to the terms and conditions identified below.

COVENANTS

17. Dr. Fannin admits that the foregoing facts constitute grounds to impose conditions upon his Maine medical license pursuant to the following subsections of 32 M.R.S. § 3282-A(2):

a. Subsection C: A professional diagnosis of a mental or physical condition that has resulted or may result in the licensee performing services in a manner that endangers the health or safety of patients;

b. Subsection F: Unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a standard of professional behavior, including engaging in disruptive behavior, that has been established in the practice for which the licensee is licensed. For purposes of this paragraph, "disruptive behavior" means aberrant behavior that interferes with or is likely to interfere with the delivery of care.

18. Based upon Dr. Fannin's admissions in paragraph 17 above as well as Dr. Fannin's efforts to maintain an active and effective recovery, the Board and Dr. Fannin agree to the following conditions imposed upon his license to practice medicine in the State of Maine,

which conditions shall become effective upon the execution of this Consent Agreement and shall remain effective until this Consent Agreement is modified or rescinded in writing by all of the parties hereto:

a. Abstinence. Dr. Fannin shall totally refrain from the use or possession of any and all Prohibited Substances except drugs that are dispensed or prescribed by a single primary care physician or drugs that are dispensed or prescribed under circumstances that constitute a genuine medical or surgical emergency. "Prohibited Substances" as used throughout this Consent Agreement shall mean all controlled substances (i.e. benzodiazepines; sedatives; hypnotics or similar drugs; opiates; cocaine); alcohol, and all mood and/or consciousness or mind-altering substances, whether illicit or not. In the event that the Board or Board staff receives a report of use or possession of any Prohibited Substance by Dr. Fannin, it shall result in the immediate suspension of his Maine medical license, which shall continue to be suspended until the Board holds a hearing on the matter.

b. Enrollment and Successful Participation in the Maine Medical Professionals Health Program (MPHP). On or about March 21, 2013, the Board received written confirmation of Dr. Fannin's enrollment in and successful participation in the MPHP. Dr. Fannin shall continue to fully and successfully participate in the Maine Medical Professionals Health Program pursuant to a written contract approved by the Board. Dr. Fannin understands and agrees that his written contract with the MPHP must be approved by the Board, and that any changes to his written contract with the MPHP must be approved by the Board. In complying with this provision, Dr. Fannin specifically and explicitly waives vis a vis the Board, the Board staff, and the Department of Attorney General any claims of confidentiality regarding: (i) the written contract with the MPHP; (ii) any and all records pertaining to his compliance with his contract with the MPHP; and (iii) any records, including but not limited to substance abuse treatment records and laboratory reports, in the possession of the MPHP regarding Dr. Fannin. The MPHP contract must include a condition that Dr. Fannin submit to testing or monitoring for the presence of any Prohibited Substances as defined under this Consent Agreement. In complying with this testing or monitoring provision, Dr. Fannin agrees to the following:

(i) Immediate, Indefinite, Automatic Suspension for Failure To Successfully Participate in the MPHP. Dr. Fannin's failure to enroll in and/or successfully participate in the MPHP shall result in the immediate, indefinite, automatic suspension of his Maine medical license, which shall continue until the Board holds a hearing on the matter. At hearing, the Board shall make a determination about whether or not Dr. Fannin has enrolled and successfully participated in the MPHP. The suspension shall become effective at the time that Dr. Fannin receives actual notice from

the Board that a report of violation(s) has been made. Actual notice can be provided by telephone, in person, in writing, by another means or any combination of the above-referenced means.

(ii) Testing/Monitoring. Dr. Fannin shall undergo such testing of the type (including but not limited to urine, blood, hair or fingernail analysis) as determined by the MPHP and as frequently and for the duration agreed to in the written contract with the MPHP. Failure to undergo such testing as required by the written contract with the MPHP shall constitute a violation of this Consent Agreement, which shall be immediately reported to the Board within 24 hours by the MPHP, and grounds for the immediate suspension of Dr. Fannin's Maine medical license pending hearing. The suspension shall become effective at the time that Dr. Fannin receives actual notice from the Board that a report of a failure to undergo testing has been made. Actual notice can be provided by telephone, in person, in writing, by another means or any combination of the above-referenced means.

(iii) Immediate Report of Positive Test Results. Any test result which indicates any level of a prohibited substance shall be immediately reported by Dr. Fannin and the MPHP to the Board in writing within 24 hours after Dr. Fannin and the MPHP receive notice of the positive test. Dr. Fannin understands that MPHP has a separate duty to report such a positive to the Board pursuant to existing protocols. By way of clarification, immediate reports will not be required if the tests show a positive result for a mood or mind altering drug that is known to the Board and MPHP to be a drug prescribed by Dr. Fannin's treatment provider for a medical condition and the levels appear consistent with the quantity and dosage prescribed.

(iv) Retention of Reports. During the term of this Consent Agreement, all original laboratory data and test reports shall be retained by the MPHP until instructed otherwise by the Board.

(v) Rebuttable Presumption and Admission into Evidence of Test Results. It is agreed and understood that a test evidencing the presence of any Prohibited Substance, shall raise a rebuttable presumption that such substance was in fact used by Dr. Fannin. Such a positive test result shall alone, including but not limited to any test result showing the presence of ethyl glucuronide, ethyl sulfate, or phosphatidyl ethanol, be sufficient to prove the use of the Prohibited Substance by Dr. Fannin. Dr. Fannin further agrees that the result of the test shall be admitted into evidence in any proceeding regarding his Maine medical license, whether before the Board or before a Court of competent jurisdiction.

(vi) Accidental Ingestion/Exposure Not a Defense. Dr. Fannin is hereby advised and agrees that the ingestion of poppy seeds, mouthwash and over the counter cough or cold medicines or remedies has from time to time been raised as a defense to a positive screen result for morphine, opiates and/or alcohol. For that reason, Dr. Fannin agrees to refrain from ingesting poppy seeds in any food substances, mouthwash and over the counter cough or cold medicines or remedies as a condition of this Consent Agreement. In the event that Dr. Fannin has a positive screen for morphine, opiates and/or alcohol, Dr. Fannin agrees that the ingestion of poppy seeds and/or mouthwash and/or over the counter cough or cold medicines shall not constitute a defense to such a positive screen. In addition, Dr. Fannin is hereby advised that the use of alcohol-based hand sanitizers has from time to time been raised as a defense to a positive screen result for alcohol. For that reason, Dr. Fannin agrees to refrain from using alcohol-based hand sanitizers as a condition of this Consent Agreement, and further agrees that in the event of a positive screen for alcohol that the use of an alcohol-based hand sanitizer shall not constitute a defense to such a positive screen.

(vii) Immediate, Indefinite, Automatic Suspension for Positive Test. If any urine or blood test is positive (i.e., in any manner evidences any use of any Prohibited Substance – including a positive result for the presence of ethyl glucuronide, ethyl sulfate, or phosphatidyl ethanol, then the result shall be the immediate, indefinite, automatic suspension of Dr. Fannin's Maine medical license, which shall continue until the Board holds a hearing on the matter, unless the Board, or the Board Executive Secretary and the Board's assigned Assistant Attorney General, earlier determine that the report is without merit. The suspension shall become effective at the time that Dr. Fannin receives actual notice from the Board that a report of violation(s) has been made. Actual notice can be provided by telephone, in person, in writing, by another means or any combination of the above-referenced means.

(viii) Board Hearing to Determine if Dr. Fannin Used Any Prohibited Substance. After receiving a positive report evidencing use by Dr. Fannin of any Prohibited Substance, the Board shall investigate the situation, including demanding a response from Dr. Fannin. The Board will hold a hearing within 60 days of the automatic suspension or as soon thereafter as practicable (unless both Dr. Fannin and the Board agree to hold the hearing later) and it shall be held pursuant to the Maine Administrative Procedure Act.

(ix) Release. Dr. Fannin agrees that by executing this Consent Agreement he waives any and all objections to the Board, Board staff, and the Board's assigned Assistant Attorney General having direct contact with the MPHP, including:

- (a) communicating directly with the MPHP regarding his compliance with that program;
- (b) requesting and obtaining copies of any and all documentation regarding his participation in the MPHP, including any and all medical records, evaluations, and reports of monitors and treatment providers;
- (c) physically inspecting the MPHP files regarding Dr. Fannin's compliance with the MPHP contract.

c. Mental Health/Substance Abuse Counseling and Therapy. Prior to returning to the active practice of medicine, Dr. Fannin shall submit for Board approval the name and qualifications of a licensed mental health care provider and a licensed substance abuse provider with whom Dr. Fannin shall engage in treatment and psychotherapy as frequently and for as long as determined necessary by the provider(s). Dr. Fannin may propose a single licensed individual to provide both mental health and substance abuse treatment. The Board shall retain the sole discretion, without hearing, to grant or deny approval of the provider(s) proposed by Dr. Fannin. Dr. Fannin acknowledges that any decision by the Board concerning this issue is not appealable.

d. Waiver of Confidentiality and Release of Records. Dr. Fannin agrees and understands that for the duration of this Consent Agreement the Board and the Department of Attorney General shall have complete access to his present and future personal medical, psychotherapy and counseling records, including: records regarding chemical dependency; recording regarding mental health issues; and to all otherwise confidential data pertaining to treatment or monitoring of Dr. Fannin for substance abuse and/or mental health issues either within or outside of the MPHP. Dr. Fannin waives any privileges concerning such information, reports, or records, and agrees to execute any and all releases necessary to permit the Board or the Department of Attorney General access to such information. All releases must, in addition to waiving any relevant State law privileges or immunities, provide the Board and the Department of Attorney General with access to all material covered by 42 C.F.R., Part 2. In the event that the releases are not sufficient to obtain access to any information which the Board considers relevant, Dr. Fannin agrees to personally obtain such information and furnish it to the Board, to the extent permitted by law.

e. Professional Management. Dr. Fannin agrees to comply with the following conditions regarding his active practice of medicine:

i. Board-Approved Physician Monitor. Prior to his return to the active practice of medicine, Dr. Fannin must have a Board-approved practice monitor who must be a psychiatrist and who shall monitor his medical practice. In complying with this requirement, Dr. Fannin shall submit to the Board for its approval the names of a proposed practice monitor, whom the Board has the sole discretion to approve or deny. Each month following the execution of this Consent Agreement, the monitoring physician must review ten (10) random patient medical records created and/or maintained by Dr. Fannin, and immediately report to the Board any concerns regarding clinical competency or record keeping. In the event that Dr. Fannin is in fact seeing ten (10) patients or less per month, the monitoring physician shall randomly review 50% of the total number of patient records created and maintained for that month by Dr. Fannin, and immediately report to the Board any concerns regarding clinical competency or record keeping. The monitoring physician(s) shall report such information to the Board by telephone and in writing within 24 hours or as soon thereafter as possible. Dr. Fannin understands that the monitoring physician will be an agent of the Board pursuant to Title 24 M.R.S. § 2511. Dr. Fannin shall permit the monitoring physician full access to his medical practice, including but not limited to all patient medical records and information. The Board-approved monitor(s) shall provide the Board with reports regarding Dr. Fannin's medical practice on November 1st and May 1st of every year following the execution of this Consent Agreement. Dr. Fannin shall not actively practice medicine until the Board has approved a physician monitor pursuant to this provision. After one (1) year of successful medical practice under this monitoring, Dr. Fannin may request that the Board amend or delete this condition of this Consent Agreement. The Board has the sole discretion to grant or deny a request to amend or delete this condition.

ii. Maximum work hours per week. Dr. Fannin agrees that he will work no more than forty (40) hours per week, excluding "on call" hours. After one (1) year of successful medical practice under this monitoring, Dr. Fannin may request that the Board amend or delete this condition of this Consent Agreement. The Board has the sole discretion to grant or deny a request to amend or delete this condition.

f. Notification to Medical Employer(s)/Potential Medical Employers/Licensing Jurisdictions. Dr. Fannin shall provide a copy of this Consent Agreement to any medical employers or potential medical employers, and to any jurisdiction in which he holds or seeks a medical license.

g. Notification of Change of Address/Contact Information. Dr. Fannin shall within ten (10) days following the execution of this Consent Agreement provide the Board staff with an address, telephone number and e-mail address by which the Board staff may contact him regarding this Consent Agreement. In addition, Dr. Fannin shall

provide the Board staff with any changes regarding his address, telephone number and e-mail address within ten (10) days of any such change(s).

h. Costs of Complying with Conditions of the Consent Agreement. Dr. Fannin understands and agrees that he is responsible for paying all costs associated with complying with the terms and conditions of this Consent Agreement.

19. Violation of any of the terms or conditions of this Consent Agreement by Dr.

Fannin shall constitute grounds for discipline, including but not limited to modification, suspension, or revocation of licensure or the denial of re-licensure.

20. Pursuant to 10-M.R.S. § 8003(5)(B) the Board and Dr. Fannin agree that the Board has the authority to issue an order, following hearing, imposing discipline upon his Maine medical license, including but not limited to modifying or revoking his Maine medical license in the event that he fails to comply with any of the terms or conditions of this Consent Agreement.

21. Dr. Fannin waives his right to a hearing before the Board or any court regarding all facts, terms and conditions of this Consent Agreement. Dr. Fannin agrees that this Consent Agreement is a final order. This Consent Agreement is not appealable and is effective until modified or rescinded by the parties hereto. This Consent Agreement cannot be amended orally. It can only be amended by a writing signed by the parties hereto and approved by the Office of Attorney General. Dr. Fannin may file a written request, together with any supporting documentation to modify the terms and conditions of this Consent Agreement. The Board retains the sole discretion to: (a) deny Dr. Fannin's request; (b) grant Dr. Fannin's request; and/or (c) grant Dr. Fannin's request in part as it deems appropriate to ensure the protection of the public. Any decision by the Board as a result of Dr. Fannin's request to modify this Consent Agreement need not be made pursuant to a hearing and is not appealable to any court.

22. The Board and the Attorney General may communicate and cooperate regarding Dr. Fannin's practice or any other matter relating to this Consent Agreement.

23. This Consent Agreement is a public record within the meaning of 1 M.R.S. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408.

24. This Consent Agreement constitutes adverse action and may be reportable to the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB):

25. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.

26. Dr. Fannin acknowledges by his signature hereto that he has read this Consent Agreement, that he has had an opportunity to consult with an attorney before executing this Consent Agreement, that he executed this Consent Agreement of his own free will and that he agrees to abide by all terms and conditions set forth herein.

27. For the purposes of this Consent Agreement, the term "execution" shall mean the date on which the final signature is affixed to this Consent Agreement.

I, WILLIAM R. FANNIN, JR., M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT FOR CONDITIONAL LICENSURE AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING THIS CONSENT AGREEMENT, I WAIVE CERTAIN RIGHTS, INCLUDING THE RIGHT TO A HEARING BEFORE THE BOARD. I SIGN THIS CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED:

6/5/13

WR Fannin Jr
WILLIAM R. FANNIN, JR., M.D.

STATE OF Maine

Androscoggin, S.S.

Personally appeared before me the above-named William R. Fannin, Jr., M.D., and
swore to the truth of the foregoing based upon his own personal knowledge, or upon information
and belief, and so far as upon information and belief, he believes it to be true.

DATED: June 5, 2013

Diann J. King
NOTARY PUBLIC/ATTORNEY
MY COMMISSION ENDS: _____

Diann J. King
NOTARY PUBLIC
My Commission Expires
April 4, 2018

DATED: June 4, 2013

Rebecca S. Webber
REBECCA S. WEBBER, ESQ.
Attorney for Dr. Fannin

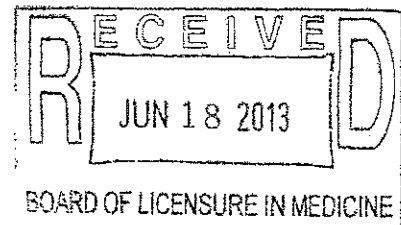
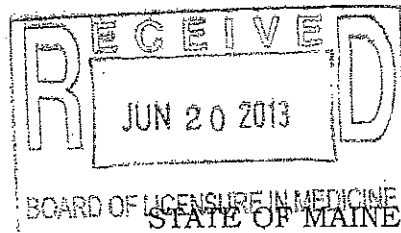
DATED: 6/11/13

Gary R. Hatfield
GARY R. HATFIELD, M.D., Chairman
Maine Board of Licensure in Medicine

DATED: 6/11/13

Dennis E. Smith
DENNIS E. SMITH
Assistant Attorney General

Effective Date: 6/11/13



BOARD OF LICENSURE IN MEDICINE

BOARD OF LICENSURE IN MEDICINE

APPENDIX B

IN RE:)
THOMAS D. HAYWARD, M.D.) CONSENT AGREEMENT
Complaint No. CR12-174)
)

This document is a Consent Agreement, effective when signed by all parties, regarding discipline and restrictions imposed upon the license to practice medicine in the State of Maine issued to Thomas D. Hayward, M.D. The parties to this Consent Agreement are: Thomas D. Hayward, M.D. ("Dr. Hayward"), the State of Maine Board of Licensure in Medicine (the "Board") and the Maine Office of the Attorney General.

STATEMENT OF FACTS

1. The Board first issued Dr. Hayward a medical license on July 12, 1983. Dr. Hayward specializes in Family Practice and Geriatrics.
2. On May 24, 2012, the Board received information from a pharmacist regarding patient CP. According to the pharmacist, patient CP was being prescribed: 480 mg of Oxycontin per day; 150 mcg in a fentanyl patch per day; and 60 mg of Hydrocodone per day. The pharmacist was concerned that the amount of opiates being prescribed to patient CP was excessive, and that the patient's wife slurred speech and behavior raised red flags for possible diversion. As a result of receiving this information, the Board staff obtained a copy of patient CP's prescription information from the Prescription Monitoring

Program (PMP) and a copy of patient CP's medical records for review.

3. On September 11, 2012, the Board reviewed the foregoing information and voted to initiate a complaint against Dr. Hayward's Maine medical license pursuant to 32 M.R.S. § 3282(A)(2) alleging inappropriate prescribing practices regarding patient CP. The Board docketed the complaint as Complaint No. CR12-174 and sent it to Dr. Hayward for a response.

4. On October 24, 2012, the Board received a response from Dr. Hayward to Complaint No. CR12-174. Dr. Hayward described the care and treatment of patient CP, including the medical rationale for prescribing such large quantities of opiates.

5. On December 12, 2012, the Board reviewed Complaint No. CR12-174, including Dr. Hayward's response and all investigative records. Following its review and discussion the Board voted to schedule an informal conference with Dr. Hayward regarding Complaint No. CR12-174 concerning the following issues: (1) opiate prescribing to patient CP; (2) issuing pre-signed blank prescriptions for schedule II to physician assistants to issue to patients; and (3) the level of his supervision of physician assistants, and in particular the supervision of the physician assistant who provided medical care and treatment to patient CP.

6. On March 12, 2013, the Board held an informal conference with Dr. Hayward regarding Complaint No. CR12-174. Following the informal conference, the Board voted to schedule the matters for an adjudicatory

hearing and offer Dr. Hayward this Consent Agreement to resolve Complaint No. CR12-174 without further proceedings.

7. This Consent Agreement has been negotiated by and between legal counsel for Dr. Hayward and the Maine Office of the Attorney General in order to resolve Complaint No. CR12-174 without an adjudicatory hearing. Absent Dr. Hayward's acceptance of this Consent Agreement by signing it, dating it, having it notarized, and returning it to the Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before June 7, 2013, the Board will resolve this matter by holding an adjudicatory hearing at a later date.

8. By signing this Consent Agreement, Dr. Hayward waives any and all objections to, and hereby consents to allow the Board's legal counsel to present this proposed Consent Agreement to the Board for possible ratification. Dr. Hayward also forever waives any arguments of bias or otherwise against any of the Board members in the event that the Board fails to ratify this proposed Consent Agreement.

COVENANTS

In lieu of proceeding to an adjudicatory hearing the Board and Dr. Hayward agree to the following disposition.

9. With regard to Complaint No. CR12-174 Dr. Hayward neither admits nor denies the allegations, but concedes that should the matter proceed to an adjudicatory hearing the Board would have sufficient evidence from

which it could conclude by the preponderance of the evidence that he:

- a. Failed to provide the appropriate level of supervision of the physician assistant who provided care and treatment to patient CP by failing to ensure that the physician assistant adhered to Board Rule Chapter 21 "Use of Controlled Substances For Treatment of Pain" and to current "Universal Precautions" for the treatment of patients for chronic, non-cancer pain;
- b. Issued pre-signed blank prescriptions for schedule II medications to physician assistants to issue to patients; and
- c. Allowed a physician assistant who did not have schedule II prescribing privileges from the Board to in effect issue prescriptions for schedule II medications to patients.

Dr. Hayward concedes that such conduct constitutes grounds for discipline of his Maine medical license for unprofessional conduct pursuant to 32 M.R.S. § 3282-A(2)(F).

10. As discipline for the conduct described above, Dr. Hayward agrees to:

- a. Accept a REPRIMAND. As a medical professional, Dr. Hayward was responsible for being aware of and complying with:
 - (1) The accepted standards of supervision of physician assistants who provide care for the treatment of chronic pain with opiates by ensuring that they are creating and maintaining

appropriate medical records and adhering to Board Rule Chapter 21 "Use of Controlled Substances For Treatment of Pain" and to current "Universal Precautions" for the treatment of patients for chronic, non-cancer pain;

(2) The federal laws regarding issuing pre-signed blank prescriptions for schedule II drugs; and

(3) The laws and rules of the Board and the requirement that any physician assistant whom he supervises obtains authority from the Board to issue prescriptions for schedule II medication to patients.

Dr. Hayward agrees to henceforth comply with all applicable standards, laws and rules regarding the prescribing of all controlled substances and the supervision of physician assistants.

b. Effective upon the execution of this Consent Agreement, accept the following license restrictions, which shall remain in effect unless or until this Consent Agreement is rescinded or amended by all of the parties hereto:

(1) Dr. Hayward may not act as a supervising physician for more than one (1) physician assistant at any one time.

(2) Dr. Hayward shall ensure that any physician assistant under his supervision does not prescribe or issue prescriptions for any schedule II controlled substances until and unless the physician

assistant obtains authorization from the Board to prescribe schedule II controlled substances.

(3) Dr. Hayward shall ensure that any physician assistant acting under his supervision shall immediately cease prescribing any controlled medications, including all opiates and benzodiazepines, for the treatment of chronic pain except for:

- (a) Patients in skilled nursing facilities or long-term care facilities;
- (b) Patients in hospice care; or
- (c) Patients with metastatic cancer.

In complying with this restriction, Dr. Hayward shall ensure that:

- (a) Any and all prescriptions that are issued by the physician assistant under his supervision for the three excepted categories of patients identified above are annotated with the words "skilled nursing facility/long-term care" or "hospice care" or "metastatic cancer" as applicable to each patient; and
- (b) Any physician assistant under his supervision may prescribe controlled substances for no more than ten (10) consecutive days to treat acute conditions; and

(c) Any physician assistant under his supervision complies with Board Rule, Chapter 21, "Use of Controlled Substances For Treatment of Pain" to the extent that he prescribes any controlled drugs for the treatment of acute pain.

11. In order to ensure his compliance with the restriction on the ability of the physician assistant under his supervision to prescribe controlled drugs for the treatment of chronic pain, Dr. Hayward agrees to fully cooperate with the Board and to permit the Board or its agent(s) to inspect his medical practice, including allowing the Board or its agents full access to and copying of the patient medical records of his medical practice as allowed by law.

12. Dr. Hayward waives his right to a hearing before the Board or any court regarding all findings, terms, restrictions and conditions of this Consent Agreement. Dr. Hayward agrees that this Consent Agreement is a final order resolving Complaint No. CR12-174. This Consent Agreement is not appealable and is effective until or unless modified or rescinded in writing by the parties hereto. This Consent Agreement cannot be amended orally. It can only be amended by a writing signed by the parties hereto and approved by the Office of Attorney General.

13. After one year of compliance with the terms and conditions of this Consent Agreement, Dr. Hayward may request amendments to this Consent Agreement. The Board retains the sole discretion to grant or deny a request to

amend the terms and conditions of this Consent Agreement. Any decision made by the Board pursuant to this paragraph does not require an adjudicatory hearing and is not appealable.

14. The Board and the Maine Office of the Attorney General may communicate and cooperate regarding Dr. Hayward or any other matter relating to this Consent Agreement.

15. This Consent Agreement is a public record within the meaning of 1 M.R.S. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408. This Consent Agreement constitutes disciplinary and adverse licensing action that is reportable to the Federation of State Medical Boards (FSMB), the National Practitioner Data Bank (NPDB), and the Healthcare Integrity and Protection Data Bank (HIPDB).

16. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.

17. The Board and Dr. Hayward agree that no further agency or legal action will be initiated against him by the Board based upon Complaint No. CR12-174, except or unless he fails to comply with the terms and conditions of this Consent Agreement.

18. Dr. Hayward acknowledges that, pursuant to Title 10 M.R.S. § 8003(5)(B), his failure to comply with any of the terms or conditions of this Consent Agreement shall constitute grounds for additional disciplinary action against his Maine medical license, including but not limited to an order, after

hearing, suspending or revoking his license.

19. Dr. Hayward acknowledges and agrees that, pursuant to Title 10 M.R.S. § 8003(5), the Board has the authority to suspend or revoke his medical license in the event that he fails to comply with any terms or conditions of this Consent Agreement.

20. Dr. Hayward has been represented by Michael A. Duddy, Esq., who has participated in the negotiation of this Consent Agreement.

21. Dr. Hayward acknowledges by his signature hereto that he has read this Consent Agreement, that he has had an opportunity to consult with an attorney before executing this Consent Agreement, that he executed this Consent Agreement of his own free will and that he agrees to abide by all terms and conditions set forth herein.

22. For the purposes of this Consent Agreement, the term "execution" shall mean the date on which the final signature is affixed to this Consent Agreement.

I, THOMAS D. HAYWARD, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING IT, I WAIVE CERTAIN RIGHTS, INCLUDING THE RIGHT TO A HEARING BEFORE THE BOARD. I SIGN THIS CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

Dated: 6/10/12


THOMAS D. HAYWARD, M.D.

STATE OF Maine
Penobscot, S.S.

Personally appeared before me the above-named, Thomas D. Hayward, M.D., and swore to the truth of the foregoing based upon his own personal knowledge, or upon information and belief, and so far as upon information and belief, he believes it to be true.

Dated:

6/10/13


NOTARY PUBLIC/ATTORNEY

LORI A. SINCLAIR

Notary Public - State of Maine

MY COMMISSION ENDS: ~~My Commission Expires~~ October 6, 2013

Dated:

June 17, 2013



MICHAEL A. DUDDY, ESQ.

Attorney for Thomas D. Hayward, M.D.

STATE OF MAINE BOARD OF
LICENSURE IN MEDICINE

Dated:

6/17/13


GARY R. HATFIELD, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF ATTORNEY GENERAL

Dated:

6/19/13

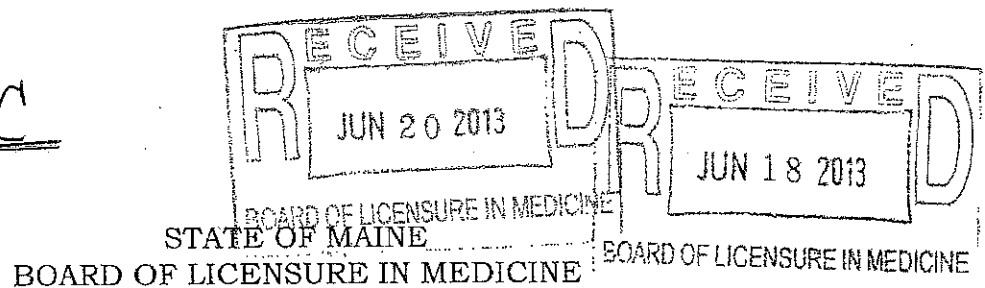

DENNIS E. SMITH

Assistant Attorney General

Effective Date:

6/19/13

APPENDIX C



IN RE:)
NELSON E. MEAKER, PA-C)
Complaint No. CR12-175)
)
)

CONSENT AGREEMENT
FOR DISCIPLINE AND
RESTRICTED LICENSE

This document is a Consent Agreement For Discipline and Restricted Licensure, effective when signed by all parties, regarding discipline imposed upon and the issuance of an active restricted license to practice medicine in the State of Maine to Nelson E. Meaker, PA-C. The parties to this Consent Agreement are: Nelson E. Meaker, PA-C ("Mr. Meaker"), the State of Maine Board of Licensure in Medicine (the "Board") and the Maine Office of the Attorney General.

STATEMENT OF FACTS

1. The Board first issued Mr. Meaker a physician assistant license on November 1, 2000.

2. On May 24, 2012, the Board received information from a pharmacist regarding patient CP. According to the pharmacist, patient CP was being prescribed: 480 mg of Oxycontin per day; 150 mcg in a fentanyl patch per day; and 60 mg of Hydrocodone per day. The pharmacist was concerned that the amount of opiates being prescribed to patient CP was excessive, and that the patient's wife slurred speech and behavior raised red flags for possible diversion. As a result of receiving this information, the Board staff obtained a

copy of patient CP's prescription information from the Prescription Monitoring Program (PMP) and a copy of patient CP's medical records for review.

3. On September 11, 2012, the Board reviewed the foregoing information and voted to initiate a complaint against Mr. Meaker's Maine physician assistant license pursuant to 32 M.R.S. § 3282(A)(2) alleging inappropriate prescribing practices regarding patient CP. The Board docketed the complaint as Complaint No. CR12-175 and sent it to Mr. Meaker for a response.

4. On October 23, 2012, the Board received a response from Mr. Meaker to Complaint No. CR12-175. Mr. Meaker described his care and treatment of patient CP, including his medical rationale for prescribing such large quantities of opiates.

5. On December 12, 2012, the Board reviewed Complaint No. CR12-175, including Mr. Meaker's response and all investigative records. Following its review and discussion the Board voted to schedule an informal conference with Mr. Meaker regarding Complaint No. CR12-175 concerning the following issues: (1) opiate prescribing to patient CP; and (2) issuing prescriptions that had been pre-signed by his supervising physician to patients for schedule II controlled drugs.

6. On March 12, 2013, the Board held an informal conference with Mr. Meaker regarding Complaint No. CR12-175. Following the informal conference, the Board voted to schedule the matters for an adjudicatory

hearing and offer Mr. Meaker this Consent Agreement to resolve Complaint No. CR12-175 without further proceedings.

7. This Consent Agreement has been negotiated by and between legal counsel for Mr. Meaker and the Maine Office of the Attorney General in order to resolve Complaint No, CR12-175 without an adjudicatory hearing. Absent Mr. Meaker's acceptance of this Consent Agreement by signing it, dating it, having it notarized, and returning it to the Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before June 7, 2013, the Board will resolve this matter by holding an adjudicatory hearing at a later date.

8. By signing this Consent Agreement, Mr. Meaker waives any and all objections to, and hereby consents to allow the Board's legal counsel to present this proposed Consent Agreement to the Board for possible ratification. Mr. Meaker also forever waives any arguments of bias or otherwise against any of the Board members in the event that the Board fails to ratify this proposed Consent Agreement.

COVENANTS

In lieu of proceeding to an adjudicatory hearing the Board and Mr. Meaker agree to the following disposition.

9. With regard to Complaint Nos. CR12-175 Mr. Meaker concedes that the Board has sufficient evidence from which it could conclude that he:

- a. Failed to adhere to Board Rule Chapter 21 "Use of Controlled

Substances For Treatment of Pain" and to current "Universal Precautions" for the treatment of patients for chronic, non-cancer pain;

b. Issued prescriptions for schedule II medications to patients using prescriptions that had been pre-signed by his supervising physician and without having schedule II prescribing privileges with the Board; and

c. Issued prescriptions for schedule II medications without applying for or obtaining schedule II prescribing privileges from the Board.

Mr. Meaker concedes that such conduct constitutes grounds for discipline of his Maine physician-assistant license for unprofessional conduct pursuant to 32 M.R.S. § 3282-A(2)(F).

10. As discipline for the conduct admitted above, Mr. Meaker agrees to:

a. Accept a REPRIMAND. As a medical professional, Mr.

Meaker was responsible for being aware of and complying with:

(1) The accepted standards of care for the diagnosis and treatment of chronic pain with opiates; and

(2) The federal laws regarding possessing and issuing pre-signed prescriptions for Schedule II drugs; and

(3) The laws and rules of the Board and the requirement that he obtain authority from the Board to issue prescriptions for

Schedule II medication to patients.

Mr. Meaker agrees to henceforth comply with all applicable standards, laws and rules regarding the prescribing of all controlled substances.

b. Effective upon the execution of this Consent Agreement, accept the following license restrictions, which shall remain in effect unless or until this Consent Agreement is rescinded or amended by all of the parties hereto:

(1) Mr. Meaker shall immediately cease prescribing any controlled medications, including all opiates and benzodiazepines, for the treatment of chronic pain except for:

- (a) Patients in skilled nursing facilities or long-term care facilities;
- (b) Patients in hospice care; or
- (c) Patients with metastatic cancer.

In complying with this restriction, Mr. Meaker:

- (a) Shall ensure that any and all prescriptions that he issues for the three excepted categories of patients identified above are annotated with the words "skilled nursing facility/long-term care" or "hospice care" or "metastatic cancer" as applicable to each patient; and

- (b) May prescribe controlled substances for no more than ten (10) consecutive days (i.e. with no refills) to treat acute conditions; and
- (c) Shall comply with Board Rule, Chapter 21, "Use of Controlled Substances For Treatment of Pain" to the extent that he prescribes any controlled medications for the treatment of acute pain.

(2) Mr. Meaker shall not prescribe or issue prescriptions for any schedule II controlled substances until and unless he obtains authorization from the Board to prescribe schedule II controlled substances.

c. Within six (6) months following the execution of this Consent Agreement, Mr. Meaker shall successfully complete continuing medical education courses in the following subjects, which courses must be pre-approved by the Board:

- (1) Prescribing of controlled drugs; and
- (2) Medical record keeping.

In complying with this condition, Mr. Meaker understands and agrees that he shall be responsible for all costs associated with completing the courses, and with providing the Board with documentary proof of his successful completion of the Board pre-approved courses within six (6) months following the execution of this Consent Agreement.

11. In order to ensure his compliance with the restriction on his ability to prescribe controlled drugs for the treatment of chronic pain, Mr. Meaker agrees to fully cooperate with the Board and to permit the Board or its agent(s) to inspect his medical practice, including allowing the Board or its agents full access to and copying of the patient medical records of his medical practice as allowed by law.

12. Mr. Meaker waives his right to a hearing before the Board or any court regarding all findings, terms, restrictions and conditions of this Consent Agreement. Mr. Meaker agrees that this Consent Agreement is a final order resolving complaint No. CR12-175. This Consent Agreement is not appealable and is effective until or unless modified or rescinded in writing by the parties hereto. This Consent Agreement cannot be amended orally. It can only be amended by a writing signed by the parties hereto and approved by the Office of Attorney General.

13. The Board and the Maine Office of the Attorney General may communicate and cooperate regarding Mr. Meaker or any other matter relating to this Consent Agreement.

14. This Consent Agreement is a public record within the meaning of 1 M.R.S. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408. This Consent Agreement constitutes disciplinary and adverse licensing action that is reportable to the Federation of State Medical Boards (FSMB), the National Practitioner Data Bank (NPDB), and the

Healthcare Integrity and Protection Data Bank (HIPDB).

15. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.

16. The Board and Mr. Meaker agree that no further agency or legal action will be initiated against him by the Board based upon Complaint No. CR12-175, except or unless he fails to comply with the terms and conditions of this Consent Agreement.

17. Mr. Meaker acknowledges that, pursuant to Title 10 M.R.S. § 8003(5)(B), his failure to comply with any of the terms or conditions of this Consent Agreement shall constitute grounds for additional disciplinary action against his Maine medical license, including but not limited to an order, after hearing, suspending or revoking his license.

18. Mr. Meaker acknowledges and agrees that, pursuant to Title 10 M.R.S. § 8003(5); the Board has the authority to suspend or revoke his medical license in the event that he fails to comply with any terms or conditions of this Consent Agreement.

19. Mr. Meaker has been represented by Michael A. Duddy, Esq., who has participated in the negotiation of this Consent Agreement.

20. Mr. Meaker acknowledges by his signature hereto that he has read this Consent Agreement, that he has had an opportunity to consult with an attorney before executing this Consent Agreement, that he executed this Consent Agreement of his own free will and that he agrees to abide by all terms

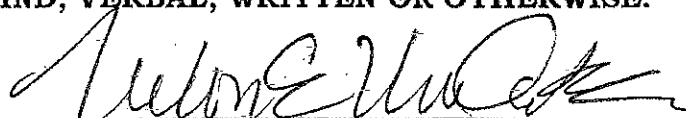
and conditions set forth herein.

21. For the purposes of this Consent Agreement, the term "execution" shall mean the date on which the final signature is affixed to this Consent Agreement.

I, NELSON E. MEAKER, PA-C, HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING IT, I WAIVE CERTAIN RIGHTS, INCLUDING THE RIGHT TO A HEARING BEFORE THE BOARD. I SIGN THIS CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

Dated:

6/10/2013



NELSON E. MEAKER, PA-C

STATE OF

Maine

County of Penobscot, S.S.

Personally appeared before me the above-named, Nelson E. Meaker, PA-C, and swore to the truth of the foregoing based upon his own personal knowledge, or upon information and belief, and so far as upon information and belief, he believes it to be true.

Dated:

June 10, 2013



ALYSON S. DUPLISEA

Notary Public • State of Maine

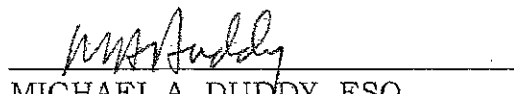
NOTARY PUBLIC / ATTORNEY My Commission Expires February 6, 2015

MY COMMISSION ENDS:

February 6, 2015

Dated:

June 17, 2013



MICHAEL A. DUDDY, ESQ.

Attorney for Nelson E. Meaker, PA-C

STATE OF MAINE BOARD OF
LICENSURE IN MEDICINE

Dated:

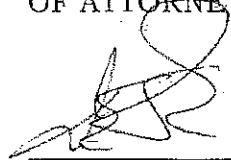
6/19/13


GARY R. HATFIELD, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF ATTORNEY GENERAL

Dated:

6/19/13


DENNIS E. SMITH
Assistant Attorney General

Effective Date:

6/19/13

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:)
Robert K. Desai, M.D.) INTERIM CONSENT AGREEMENT
Complaint No. CR13-86)

This document is an Interim Consent Agreement, effective when signed by all parties, regarding disciplinary action against and conditions imposed upon the license to practice medicine in the State of Maine held by Robert K. Desai, M.D. The parties to the Consent Agreement are: Robert K. Desai, M.D. ("Dr. Desai"), the State of Maine Board of Licensure in Medicine ("the Board") and the State of Maine Department of the Attorney General. This Consent Agreement is entered into pursuant to 10 M.R.S.A. § 8003(5)(B) and 32 M.R.S.A. § 3282-A.

STATEMENT OF FACTS

1. Dr. Desai has held a license to practice medicine in the State of Maine since December 13, 2000. Dr. Desai specializes in and is certified by the American Board of Medical Specialties in Diagnostic Radiology.
2. On or about May 8, 2013, the Board received information submitted to it pursuant to Title 24 M.R.S. § 2505¹ from an Emergency Department ("ED") physician at Northern Maine Medical Center ("NMMC") regarding an incident on May 7, 2013, regarding Dr. Desai. According to the report, on May 7, 2013, the ED physician performed a history, physical exam,

¹ Title 24 M.R.S. § 2505 provides in relevant part:

Any professional competence committee within this State and any physician licensed to practice or otherwise lawfully practicing within this State shall, and any other person may, report the relevant facts to the appropriate board relating to the acts of any physician in this State if, in the opinion of the committee, physician or other person, the committee or individual has reasonable knowledge of acts of the physician amounting to gross or repeated medical malpractice, habitual drunkenness, addiction to the use of drugs, professional incompetence, unprofessional conduct or sexual misconduct identified by board rule. The failure of any such professional competence committee or any such physician to report as required is a civil violation for which a fine of not more than \$1,000 may be adjudged.

and blood work on Dr. Desai, who was on duty as a radiologist at NMMC. According to the report, the history, physical exam and blood work supported the diagnosis of acute alcohol intoxication, which was present at the time Dr. Desai was actively involved in patient care.

3. On May 8, 2013, Dr. Desai telephoned the Medical Director for the Board and indicated that the day prior NMMC had sent him home due to concerns that he was under the influence of alcohol. Dr. Desai confirmed that prior to being sent home he had patient responsibilities at NMMC. Dr. Desai indicated that he had been seeing an alcohol counselor since the spring of 2012, but was not enrolled in a physician health program.

4. On May 13, 2013, the Board received pursuant to a subpoena medical records from NMMC regarding Dr. Desai's evaluation and blood work at the NMMC ED on May 7, 2013. According to that information, at approximately 3:15 pm Dr. Desai was referred to the ED at NMMC because the radiology department staff was very concerned about his cognition and unusual manner, lack of coordination, and slurred speech. On May 7, 2013, at approximately 3:15 pm Dr. Desai underwent a history, physical examination, and blood work by the on-duty ED physician at NMMC, who diagnosed Dr. Desai with acute alcohol intoxication. Dr. Desai denied any use of substances until the lab results became available, at which point Dr. Desai only admitted drinking alcohol the previous evening. According to the lab results, Dr. Desai's blood alcohol content at 3:15 pm was 390 MG/DL, which is the equivalent to .39 grams per 100 milliliters of blood – almost five times the legal limit (.08) for being able to drive a motor vehicle – and indicative of tolerance to alcohol based upon chronic use.

5. On May 14, 2013, the Board reviewed the foregoing information and voted to: immediately suspend Dr. Desai's Maine medical license pursuant to Title 5 M.R.S. § 10004(3) for a period of 30 days due to the immediate jeopardy that his continued practice of medicine

posed to the public; issued a complaint against Dr. Desai's Maine medical license; scheduled the matter for an adjudicatory hearing on June 11, 2013; and offer Dr. Desai this Interim Consent Agreement in lieu of proceeding with the adjudicatory hearing on June 11, 2013.

6. This Interim Consent Agreement has been negotiated by and between Dr. Desai and legal counsel for the Board. Absent acceptance of this Interim Consent Agreement by Dr. Desai by signing it and dating it in front of a notary and returning it to Maureen Lathrop, Investigative Secretary, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before June 3, 2013, the matter will proceed to an adjudicatory hearing on June 11, 2013.

7. By signing this Consent Agreement, Dr. Desai waives, in his personal capacity, any and all objections to, and hereby consents to allow the Board's legal counsel to present this proposed Interim Consent Agreement to the Board for possible ratification. Dr. Desai waives, in his personal capacity, forever any arguments of bias or otherwise against any of the Board members in the event that the Board fails to ratify this proposed Interim Consent Agreement.

COVENANTS

8. The Board and Dr. Desai agree that it would be in Dr. Desai's and the public's best interest for him to temporarily suspend his ability to practice medicine in the State of Maine prior to the Board's ultimate disposition of this complaint.

9. Dr. Desai neither admits nor denies the facts as outlined above. However, Dr. Desai concedes that should the matter proceed to an adjudicatory hearing on June 11, 2013, the Board has sufficient evidence from which it could reasonably conclude that the facts as outlined above are true, and that they constitute grounds for discipline pursuant to:

- a. 32 M.R.S. § 3282-A(2)(B) Habitual substance abuse that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of patients.
 - b. 32 M.R.S. § 3282-A(2)(F) – Unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a standard of professional behavior, including engaging in disruptive behavior, that has been established in the practice for which the licensee is licensed. For purposes of this paragraph, "disruptive behavior" means aberrant behavior that interferes with or is likely to interfere with the delivery of care.
 - c. 32 M.R.S. § 3282-A(2)(E)(1) – Incompetence. A licensee is considered incompetent in the practice of medicine if the licensee has engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public.
-

10. Dr. Desai agrees to the continued suspension of his license to practice medicine in the State of Maine until such time as the Board takes final action – either by hearing and decision and order or by Consent Agreement – regarding Complaint No. CR13-86. In complying with this provision, Dr. Desai understands and agrees that he will not practice medicine or render any professional health care services to any person in the State of Maine or in any other location under his Maine medical license. In the meantime, Dr. Desai shall return his Maine medical license to the Board pending final resolution of Complaint No. 13-86.

11. Violation of any of the terms or conditions of this Interim Consent Agreement by Dr. Desai shall constitute unprofessional conduct and grounds for additional discipline of his Maine medical license, including but not limited to possible fines, suspension, and revocation.

12. Dr. Desai understands and agrees that pursuant to Title 10 M.R.S. §8003(5) the Board has the authority, following hearing, to suspend or revoke his Maine medical license for violating any of the terms or conditions of this Interim Consent Agreement.

13. This Interim Consent Agreement is not appealable, constitutes interim disciplinary action, is reportable to the National Practitioner Data Bank, the Federation of State

Medical Boards, and other licensing jurisdictions, and is effective until the Board holds an adjudicatory hearing and/or fully and finally resolves this matter with a final Consent Agreement or by other lawful means.

14. This Interim Consent Agreement is a public record within the meaning of 1 M.R.S.A. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S.A. § 408.

15. Nothing in this Interim Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.

I, ROBERT K. DESAI, M.D., HAVE READ AND UNDERSTAND THE FOREGOING INTERIM CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING IT, I WAIVE CERTAIN RIGHTS. I SIGN THIS INTERIM CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS INTERIM CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED:

6/3/2013

Robert K. Desai
ROBERT K. DESAI, M.D.

STATE OF

Massachusetts

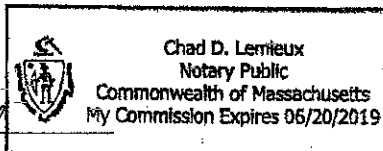
, S.S.

Personally appeared before me the above-named Robert K. Desai, M.D., and swore to the truth of the foregoing based upon his own personal knowledge, or upon information and belief, and so far as upon information and belief, he believes it to be true.

DATED:

6/3/13

Chad D. Lemieux
NOTARY PUBLIC



STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED:

6/11/13

Gary R. Hatfield, M.D.
GARY R. HATFIELD, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED:

6/11/13


DENNIS E. SMITH

Assistant Attorney General

Effective Date:

6/11/13